

In re Elsner states that foreign sales can enable a publication, if the plant can readily be obtained by one of the general public who is skilled in the art and the sale is not an isolated incident and would be of such a nature that the public would have knowledge of the invention.

The sales that occurred of Veronica Glory would not be deemed widespread or readily available to the public. The sale of plants of Veronica Glory was an isolated solitary event that was not available to the general public. The general public would not have had knowledge of sales of Veronica Glory.

In May of 1998, approximately 100 plants were sold to Blakedown Nurseries in order to build up a stock of plants. Blakedown Nurseries is located in the United Kingdom. Blakedown Nurseries went into liquidation in October of 1999 and there are no longer any documents available regarding sales or public distribution of the plant prior to that date.

Blakedown Nurseries is a wholesale nursery that sells to other nurseries and not to the general public. To Applicant's knowledge, only a few plants went to one customer in the Spring of 1999 on a market testing basis.

This was due to the fact that a) there was a need to build up stock numbers before launch of the product and b) due to propagation problems. The propagators had reported problems and it was unclear as to whether these had been caused by a failure to use the most appropriate rooting compound for the plant or whether the cuttings had not been taken at the most opportune time of the year.

Blakedown Nurseries then went into liquidation and from October 1999 all plants held by them were impounded by the liquidators until an agreement was brokered with Notcutts Nurseries in December 1999.

Public sales, therefore, did not commence until 2000, which is less than 1 year from the filing date of the present application.

Nordic Nurseries of British Columbia Canada acted on behalf of the applicant as their procedural representative for a Canadian PVR application. The application was not pursued and was allowed to lapse and become abandoned. At no time did Nordic Nurseries ever grow or sell any plants of Veronica Glory during the time period in question. Veronica Glory was never sold or grown by Nordic Nurseries. Therefore, Veronica Glory could not have been obtained from Nordic Nurseries.

Since the sales that occurred of Veronica Glory were not readily available to the public, the invention has not been enabled during the time period in question.

Applicant respectfully requests the 102 rejection be withdrawn.

Respectfully submitted,



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